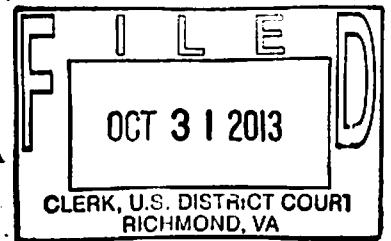


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



KENNETH NEWKIRK,

Plaintiff,

V.

LISA K. BANKINS, *et al.*,

Defendants.

Civil Action No. 3:13CV178-HEH

MEMORANDUM OPINION
(Dismissing Action Without Prejudice)


Plaintiff, a Virginia inmate proceeding *pro se* and *in forma pauperis*, filed this 42 U.S.C. § 1983 action. In order to state a viable claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of a constitutional right or of a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998) (citing 42 U.S.C. § 1983). Plaintiff's current allegations failed to provide each defendant with fair notice of the facts and legal basis upon which his or her liability rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Accordingly, by Memorandum Order entered on September 13, 2013, the Court directed Plaintiff to submit a particularized complaint within fourteen (14) days of the date of entry thereof. The Court warned Plaintiff that the failure to submit the particularized complaint would result in the dismissal of the action.

More than fourteen (14) days have elapsed since the entry of the September 13, 2013 Memorandum Order. Plaintiff failed to submit a particularized complaint. Accordingly, the action will be dismissed without prejudice.

Plaintiff also filed a motion for appointment of counsel. (ECF No. 14.) Counsel need not be appointed in § 1983 cases unless the case presents complex issues or exceptional circumstances. *See Fowler v. Lee*, 18 F. App'x 164, 166 (4th Cir. 2001) (citation omitted). This action presents no complex issues or exceptional circumstances. Additionally, Plaintiff fails to present an actionable claim. Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 14) is denied.

An appropriate order will accompany this Memorandum Opinion.

Date: Oct 30 2013
Richmond, Virginia


_____/s/
HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE